

CCD BULLETIN

Issues in Coastal Community Development

FOCUS: TRANSFERABLE DEVELOPMENT RIGHTS

One of the tools available to local governments who wish to protect ecological, historical or agricultural resources is transferable development rights (TDR). When used in an appropriate area, where market conditions are amenable and the community is receptive, TDR programs can be a very effective mechanism for setting aside certain areas from further development, while respecting private property rights. This approach can avoid some of the political difficulties and mitigate the potential for litigation sometimes associated with down-zoning rural areas without providing compensation to current landowners for lost development potential.

The basic concept behind TDR is that the right to develop a parcel of land can be sold without actually selling the land itself, and purchased to develop a parcel in another location at a greater density than otherwise allowed. A TDR program designates “sending” areas and “receiving” areas – the sending areas are those that the community wants to protect because of environmental or other value, and the receiving areas are places where increased development is deemed desirable. Participating landowners within the sending area are allocated TDR credits based on lot size, development suitability, and/or potential development value, in return for entering into a deed restriction limiting future land use. TDR credits can then be sold to developers interested in applying them to build at an increased density, or for some other zoning incentive, at a site designated for growth. Normally TDRs are sold on the private market, with prices dependent on the forces of supply and demand. However, in some jurisdictions TDR banks have been established to purchase and sell TDRs.



In a mandatory TDR program, the sending area is often down-zoned significantly, and the receiving area may be down-zoned as well, so that developers are more likely to purchase TDRs. Under the voluntary form of TDR, no down-zoning is implemented, and the market is relied upon to encourage owners of sending area lands to sell their development rights. Voluntary TDR is often more politically acceptable and less prone to court actions for takings. However, a mandatory system may be preferred in cases where it is very important to protect the entire sending area from further development.

The success of a TDR program depends heavily on the local real estate market and the associated level of faith that both sellers and buyers have in the value of each TDR credit. Also, to ensure that demand for the credits is sustained at a level that will provide a fair price to landowners, the receiving area should be designed to accommodate more TDR credit transfers than the sending area produces.

The TDR process can be daunting; many efforts have failed due to lack of community support. And in many areas, enabling legislation is necessary to establish a TDR program. But TDRs have been implemented in several areas with a great deal of success, allowing the community to preserve open space without incurring the expense of public ownership.



COMMUNITY TOOL SHED

Why Save Farmland?

www.farmlandinfo.org/documents/29493/Why_Save_Farmland_Color.pdf

This four-page fact sheet from the Farmland Information Center outlines the reasons for preserving farmland, including economic stability, cultural heritage and environmental quality.

Plowing New Ground: Agricultural and Rural Open Space Preservation Program (Montgomery County, Maryland)

http://www.mc-mncppc.org/community/plan_areas/rural_area/related_reports/plowing_newground/toc.shtm#details

This on-line guide provides detailed information on all aspects of this TDR program, in a Q & A format. To date, Montgomery County has protected more than 43,000 acres of open space and agricultural land through this program.

King County (Washington) TDR Program Website

<http://dnr.metrokc.gov/wlr/tdr/>

The King County TDR Program is voluntary, allowing those in areas zoned for low density to apply for sending site status. The program allows private purchase and sale of TDRs, and also operates a TDR bank for the highest priority sending sites.

TDR Enabling Legislation Template

www.serconline.org/tdr/legislation.html

From the State Environmental Resource Center, this model Transfer of Development Rights Act can be adapted for use by States wishing to authorize local jurisdictions to establish TDR programs.



RECOMMENDED READING

Saving American Farmland: What Works

This comprehensive guidebook from the American Farmland Trust discusses strategies employed throughout the U.S. to protect the rural landscape. It includes case studies of successful efforts, and outlines steps for initiating a farmland protection program.

This document is not available electronically; it can be purchased (\$28) at:

www.farmland.org/merch/publist.htm.

From landmarks to landscapes: A review of current practices in the transfer of development rights

From the Journal of the American Planning Association, this article analyzes TDR programs from four areas: the Pinelands of New Jersey, Lake Tahoe basin (California and Nevada), the Santa Monica mountains (California), and Montgomery County, Maryland. Also discusses the history of TDRs and distinctions among voluntary and mandatory programs.

To download, go to:

<http://proquest.umi.com/pqdlink?vinst=PROD&vault=1&passwd=infocentral&fmt=6&startpage=-1&ver=1&vname=PQD&did=000000013335551&exp=11-03-2007&userid=4KW2M9PSCJ&deli=1&scaling=FULL&vtype=PQD&cert=L%2F4%2F5Cch70ZotevSn9sQB5PDHxKI2LXc6B%2FK%2BJ%2F1aZ8oPOb7ZwJtJvhPbGR60312moBr0N58m8NsWS01nCOktw--&req=1&rqt=309&mtid=1&TS=1119469800&clientId=13708>

(Apologies for the long URL!)

The CCD Bulletin is edited and distributed by the National Sea Grant Office. But for the most meaningful content, we're relying on you. We're especially interested in sharing your stories of successful (or less than successful) coastal community development projects. Please send your suggestions, submissions and insights to: Amy.Zimmerling@noaa.gov.